IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
WRIT PETITION NO.5611 OF 2006

M/s. D.D. Shah & Co.,
having office at Damodar
Bldg., 105, Princess
Street, Mumbai-400 002. .... Petitioner

- Versus -

Mr. Vajidali T. Kadri,
Bhadangpura, Near Dharavi,
Dharangaon, Tal. Erandol,
District: Jalgaon. .... Respondent

Shri A.K. Jalisatgi for the Petitioner.

Shri S.N. Deshpande for the Respondent.

CORAM: R.M.S. KHANDEPARKAR, J.

DATED: MARCH 02, 2007

JUDGMENT:

1. Heard. Rule. By consent, rule made returnable forthwith. The petitioner challenges the Judgment and Order dated 21-3-2006 passed by the Industrial Court, Thane in Revision Application (ULP) No.38 of 2005. By the impugned Order, the revision application filed by the respondent herein against the Judgment and Order of the Labour Court dated 10-12-2004 in Complaint (ULP) No.6 of 1991 has been allowed and the order of dismissal of the complaint passed by the Labour Court has been set aside on the ground that no chargesheet was served upon the employee prior to the termination of his services

and on that count it has been held that the petitioner has indulged in unfair labour practice under Item 1 of Schedule-IV of the Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971, hereinafter called as "the said Act", there was no jurisdiction to the Labour Court to allow the petitioner to establish the alleged misconduct on the part of the respondent by leading evidence before the Labour Court in the absence of inquiry prior to the passing of the order of termination of his services. The termination order dated 27-9-1990 issued by the petitioner against the respondent has been quashed with the direction to the petitioner to pay 50% of the back wages till 7-10-2000 with continuity in service all along with all other legal dues.

2. The challenge to the impugned order is on the ground that the Industrial Court could not have found fault with the Order of the Labour Court permitting the petitioner-employer to lead evidence in support of the order of dismissal passed against the respondent even though neither chargesheet was issued nor the inquiry was held prior to issuance of the dismissal order as the law on the said point was well-settled pursuant to the decisions of the Apex Court in **The Workmen of M/s. Firestone Tyre & Rubber Co. of India P. Ltd. v. The Management and others,** reported in AIR 1973 SC 1227,

Municipal Corporation, Greater Bombay v. P.S. Malavenkar and others, reported in 1979 II LLJ page 168, and **Gujarat Steel Tubes Ltd., etc. etc. v. Gujarat Steel Tubes Mazdoor Sabha and others,** reported in AIR 1980 SC 1896 and therefore could not have relied upon the decisions of this Court in **Theatre Employees' Union & Ors. v. S.V. Kotnis & Ors.,** reported in 1992 I CLR 474, **Wai Taluka Sahakari Kharedi Vikri Sangh Ltd., Satara v. Bajirao Mahadeo Mahadaik,** reported in 1992 I CLR 637 and **Bank Karmachari Sangh, Pune v. Cosmos Co-operative Urban Bank Ltd. & others,** reported in 1998 II LLJ page 372.

3. On the other hand, the impugned Judgment and Order is sought to be justified while contending that the issue as to whether in the absence of any chargesheet being issued, before the termination of services of an employee, whether the employer can be permitted to lead evidence to justify the action of termination of services of the employee, was never before the Apex Court in any of the three decisions sought to be relied upon and that very point has been considered by this Court in the decisions relied upon by the Industrial Court and that therefore there is no case for interference in the impugned order.

4. The respondent joined the services of the petitioner

on 11-5-1989. The services of the respondent were terminated by the petitioner by issuing letter dated 27-9-1990. The respondent thereupon approached the Labour Court with a complaint alleging indulgence in unfair labour practice by the petitioner under Item 1(a), (b), (d), (f) & (g) of Schedule-IV of the said Act. The Labour Court, after allowing the petitioner to lead evidence in support of the action of termination of services by the petitioner, by Judgment and Order dated 10-12-2004, dismissed the complaint holding that the respondent had failed to prove that the petitioner had indulged in unfair labour practice. The matter was carried in revision application. The decision of the Labour Court to permit the petitioner-employer to lead evidence in support of the action of termination of services of the respondent was sought to be challenged on the ground that there was neither any chargesheet issued disclosing the nature of misconduct nor any inquiry was held prior to termination of the services of the respondent and on that ground, it was sought to be contended that the petitioner had indulged in unfair labour practice. The Industrial Court while setting aside the order of the Labour Court held that in the absence of any chargesheet being issued disclosing the details of the misconduct, the order of termination of services could not have been held to be valid and legal and the Labour Court was wrong in permitting the

employer to lead evidence to establish misconduct for the first time or to justify the action.

5. The point for determination which arises in the matter is whether in a case of termination simpliciter, without being preceded by any chargesheet and domestic inquiry, disclosing and establishing the nature of the misconduct on the part of the employee, can the employer be allowed to lead evidence before the Labour Court to justify the action of termination of services?

6. The Apex Court in **Punjab National Bank Ltd., v. All India Punjab National Bank Employees' Federation and another,** reported in AIR 1960 SC 160 held that:

> "But it follows that if no enquiry has in fact been held by the employer, the issue about the merits of the impugned order of dismissal is at large before the tribunal and, on the evidence adduced before it, the tribunal has to decide for itself whether the misconduct alleged is proved, and if yes, what would be proper order to make."

7. In **Delhi Cloth and General Mills Co., v. Ludh Budh Singh,** reported in AIR 1972 SC 1031, it was held that:

> "(1) If no domestic enquiry had been held by the management, or if the management makes it clear that it does not rely upon any domestic enquiry that may have been held by it, it is entitled to straightaway adduce evidence before the Tribunal justifying its action. The Tribunal is bound to consider that evidence so adduced before it, on merits, and give a decision thereon. In such a case, it is not necessary for the Tribunal to consider the validity of the domestic enquiry as the employer himself does not rely on it."

8. The law laid down on the point in issue by the Apex Court in **Punjab National Bank Employees'** case (supra) has been reiterated in **The Workmen of M/s. Firestone's** case (supra) wherin the Apex Court after taking into consideration its earlier decisions, carved out certain principles which follow from those decisions in relation to the right of the employer to lead evidence before the Labour Court in a proceedings arising out of dismissal of the employee and two of the propositions which were carved out, read thus:

"1. to 3. .....

4. Even if no enquiry has been held by an employer or if the enquiry held by him is found to be defective, the Tribunal in order to satisfy itself about the legality and validity of the order, had to give an opportunity to the employer and employee to adduce evidence before it. It is open to the employer to adduce evidence for the first time justifying his action, and it is open to the employee to adduce evidence contra.

5. The effect of an employer not holding an enquiry is that the Tribunal would not have to consider only whether there was a prima facie case. On the other hand, the issue about the merits of the impugned order of dismissal or discharge is at large before the Tribunal and the latter, on the evidence adduced before it, has to decide for itself whether the misconduct alleged is proved. In such cases, the point about the exercise of managerial functions does not arise at all. A case of

> defective enquiry stands on the same footing as no enquiry.
>
> 6. to 10. ....."

9. It was further ruled in **the Workmen of M/s. Firestone's** case that:

> **"If there has been no enquiry held by the employer or if the enquiry is held to be defective, it is open to the employer even now to adduce evidence for the first time before the Tribunal justifying the order of discharge or dismissal.** We are not inclined to accept the contention on behalf of the workmen that the right of the employer to adduce evidence before the Tribunal for the first time recognized by this Court in its various decision, has been taken away. There is no indication in the section that the said right has been abrogated. If the intention of the legislature was to do away with such a right, which has been recognised over a long period of years, as will be noticed by the decisions referred to earlier,

the section would have been differently worded. Admittedly there are no express words to that effect, and there is no indication that the section has impliedly changed the law in that respect. **Therefore, the position is that even now the employer is entitled to adduce evidence for the first time before the Tribunal even if he had held no enquiry or the enquiry held by him is found to be defective.** Of course, an opportunity will have to be given to the workman to lead evidence contra. The stage at which the employer has to ask for such an opportunity, has been pointed out by this Court in Delhi Cloth and General Mills Co. Ltd. 1972-1 Lab LJ 180 = (AIR 1972 SC 1031). No doubt, this procedure may be time consuming, elaborate and cumbersome. As pointed out by this Court in the decision just referred to above, it is open to the Tribunal to deal with the validity of the domestic enquiry, if one has been held as a preliminary issue. If its finding on the subject is in favour of the management then there will be no

> occasion for additional evidence being cited by the management. But if the finding on this issue is against the management, the Tribunal will have to give the employer an opportunity to cite additional evidence justifying his action. **This right in the management to sustain its order by adducing independent evidence before the Tribunal, if no enquiry has been held or if the enquiry is held to be defective, has been given judicial recognition over a long period of years."**
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> (Emphasis supplied)

10. It is, therefore, clear that irrespective of the fact whether there was inquiry held or not and not merely in case of illegality or invalidity of the inquiry held by the employer, that the employer is entitled to establish the charges against the employee by leading the necessary evidence in that regard before the Labour Court before which the proceedings are initiated consequent to the order of termination issued against the employee. Even in a case where no inquiry was held prior to dismissal of the employee, his right to justify the action by leading necessary evidence in support of such action for the first time before the

Labour Court remains unaffected.

11. The decisions by the learned single Judge of this Court in the matters of **S.V. Kotnis** (supra), **Bajirao Mahadeo Mahadaik** (supra) and **Bank Karmachari Sangh** (supra) were in the peculiar facts of each of those decisions. In any case, the law on the point being clearly laid down by the decision of the Apex Court, the decisions of this Court contrary to the decisions of the Apex Court can be of no help to the respondent to justify the impugned order.

12. In the circumstances, the impugned order cannot be sustained and is liable to be set aside. The petition, therefore, succeeds and the impugned order is hereby set aside and the matter is remanded to the Industrial Court to deal with the revision application in accordance with the provisions of law bearing in mind the observations hereinabove. Rule is made absolute in above terms with no order as to costs.

(R.M.S. Khandeparkar, J.)

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